

MEASURES TO STRENGTHEN RESPONSES TO TECHNOLOGY-FACILITATED SEXUAL VIOLENCE REFLECTING THE CHARACTERISTICS OF THE CRIME



Despite a rapid increase in technology-facilitated sexual violence (TFSV), responses to the crime including punishment remain lagging behind. Here, we will examine the characteristics of TFSV and the limitations of existing laws in responses to the crime and discuss measures to improve the legal system.

CHARACTERISTICS OF TFSV

- **Technology-facilitated sexual violence (TFSV)** •

TFSV(digital sexual violence) is a form of misogyny and gender-based violence that uses technologies as a tool to expand into virtual spaces.

Despite its prevalence and harms, TFSV is considered trivial.

There is a gap in both punishment of offenders and support for victims due to laws established based on the traditional concept of sexual violence involving physical contact.



LIMITATIONS OF LAW

Gap and imbalance in punishment & Imbalance between the gravity of crime and punishment	Existing laws specify all the conducts that are subject to punishment. If a conduct is not spelled out in the laws, it cannot be punished no matter how similar it is to any of the conducts listed in the laws. In terms of spreadability, furthermore, the act of distributing intimate images is arguably more harmful than the act of taking such images. However, statutory penalties for the two acts are the same.
Limitations in responding to increasing concerns among women	Concerns about the possibility of intimate images being shared online are increasing. Since the laws are only concerned with whether or not the act of taking or sharing intimate images was consensual, the person who simply possesses such images without sharing them with others is not legally bound to delete them if the images were
Online sexual harassment is not considered as a form of sexual violence	Online sexual harassment that do not involve nonconsensual intimate images, faked intimate images, or child abuse materials defined by law are not considered sexual abuse but a violation of honor or social legal interests. Existing laws fail to reflect the harmful nature of online sexual harassment as a form of gender-based violence.
Limitations in punishing online stalking or “grooming”	In current laws, the definition of online stalking is narrow and the crime of engaging with children or adolescents online for the purpose of sexual exploitation is limitedly applied to conducts close to sexual exploitation. For this reason, the laws are inadequate to reveal the context of grooming.

LIMITATIONS IN INVESTIGATION AND LEGAL PROCEDURES



INVESTIGATION PROCESSES FAILING TO CONSIDER THE CHARACTERISTICS OF DIGITAL CONTENT

Once created, digital content hardly deteriorates or disintegrates by itself and can be stored in various ways and shared effortlessly. The characteristics of digital content, including its potential to be recovered and stored in multiple ways, should be (but are not) considered in the process of investigation and ruling and when discarding relevant files upon ruling.



RISK OF HAVING EXPOSED THE PRIVATE INFORMATION AND INTIMATE IMAGES OF VICTIMS

There is a risk that the private information of victims is revealed or provided to offenders during investigation or compensation proceedings. There were cases in which the private information and/or intimate images of victims were published in court proceedings or in ruling statements.

LEGAL LIMITATIONS IN TERMS OF SUPPORTING VICTIMS

Limited government support for deletion services

Only a limited range of materials, including nonconsensual intimate images, faked intimate images, and child abuse materials, are qualified for government-supported deletion services. Materials related to various forms of online sexual harassment are excluded from support for deletion and blocking services. Victims themselves have to take actions and request platform providers to delete concerned materials.

A support system separated from the support system for victims of sexual violence

The support system for TFSV victims has been established independently from the existing support system for victims of sexual violence and it is hard to the two systems.

TFSV victims are not supported as victims of sexual violence

Several different laws are applied to TFSV. If a TFSV case is processed as a crime other than sexual violence, for this reason, its victim cannot receive support as a victim of sexual violence.



MEASURES TO STRENGTHEN RESPONSES TO TFSV REFLECTING ITS CHARACTERISTICS

• In order to effectively respond to TFSV •

- 1 Secure tools to punish TFSV and make offenders accountable
- 2 Improve investigation proceedings and strengthen measures to stop the dissemination of nonconsensual intimate images.
- 3 Enact a law to strengthen support for TFSV victims

• How to improve the legal system to strengthen responses to TFSV •

Secure tools to punish TFSV and make offenders accountable	Improve investigation proceedings and strengthen measures to stop the dissemination of nonconsensual intimate images
<ul style="list-style-type: none">• Reform the provision on the crime of taking, faking, and distributing intimate images using cameras, etc.• Review and consider reforming the provision on the crime of taking intimate images using hierarchy and/or power• Introduce the crime of possessing intimate images against the will of the person depicted in the images• Make it explicit that online sexual harassment is a form of sexual violence• Increase punishment for TFSV cases in which the private information of victims is shared along with intimate images• Include those who became victims of TFSV in the context of prostitution as victims of prostitution• Expand the definition of online stalking and increase punishment for offenders• Expand the definition of grooming• Increase the accountability of offenders and expand compensation orders• Limit the application of statute of limitations	<ul style="list-style-type: none">• Make it obligatory for investigators to check if intimate images have been shared and to make requests to platform providers/relevant agencies to delete and block concerned images• Search and confiscate storage devices other than cameras, including online storage sites, used for the crime• Enable necessary forfeiture of storage devices used for the crime• Enable deletion orders for nonconsensual intimate images
	Enact a law to strengthen support for TFSV victims
	<ul style="list-style-type: none">• Enhance online and offline access to support services for victims• Reform the support system for TFSV victims and provide training for service providers• Expand the range of victims qualified for deletion support services• Expand the range of those qualified for support services for victims of sexual violence



Korean Women's Development Institute ISSUE PAPER

KWDI ISSUE PAPER

Research Title Ways of Legislative Improvement in Response to Technology-Facilitated Sexual Violence
Principal Researcher Jeonghye Kim, Associate Research Fellow

Publisher Korean Women's Development Institute
Publication Date 30 April, 2022

Measures to strengthen responses to technology-facilitated sexual violence

Abstract

■ Despite the growing incidence of technology-facilitated sexual violence (TFSV) and ever-evolving forms of gender-based violence, laws and institutions to address the problems are lacking. The existing laws established based on the traditional concept of sexual violence are limited in effectively responding to TFSV. Based on the understanding that TFSV is a crime built upon a sexual double standard rooted in gender discrimination, stigma against victim-survivorized women, and culture that sexually consumes women, it is necessary to examine the characteristics of TFSV, its evolving forms, and the limitations of existing laws in order to devise measures to improve relevant laws and institutions.

The goal of this research is to understand the limitations of existing laws, particularly in regard to punishment and victim-survivor support, and to suggest measures for legal improvements. For this, the paper uses the cases of counseling in order to identify the characteristics of TFSV and review the changes in TFSV-related laws and the limitations of existing laws. It will also analyze the legal cases of other countries. Based on the findings of this research, this paper suggests how to improve laws especially in the following areas: punishing TFSV and making offenders accountable; improving the investigation of TFSV cases and strengthening measures to prevent the spread of abusive content; and strengthening support for victim-survivors.

Punishing TFSV and making offenders accountable	Improving the investigation of TFSV cases and strengthening measures to prevent the spread of abusive content
<ul style="list-style-type: none">• Revise laws on the crime of taking/faking and distributing non-consensual images• Revise laws on the crime of taking non-consensual images by using coercion and threat• Revise laws on the crime of threat and coercion using intimate images• Introduce the crime of possessing intimate images against the will of victim-survivors• Expose the sexually violent nature of online sexual harassment• Increase punishment for the offenders of TFSV combined with privacy violation• Include the victim-survivors of prostitution as the victim-survivors of non-consensual intimate images taken in the context of prostitution• Expand the definition of online stalking and increase punishment for offenders• Expand the scope of the crime of grooming• Expand the accountability of the offender and the compensation order• Ease the application of the statute of limitations	<ul style="list-style-type: none">• Check, during the investigation process, if the intimate images were distributed, and if shared, the investigation agency should be required to order internet service providers to delete or block the images• Search and forfeit data storage devices, including online storage, in addition to cameras used in the crime• Require necessary forfeiture of data storage devices• Order the deletion of non-consensual intimate images
	Strengthening support for TFSV victim-survivors
	<ul style="list-style-type: none">• Expand access to victim-survivor support services both online and offline• Improve support systems for TFSV victim-survivors and provide training for service providers• Expand image deletion services• Expand the range of those eligible for support services

KWDI
ISSUE PAPER

Please cite this issue paper as below.
Jeonghye Kim, Aelza Kim, Boram Bai, Namhee Hng and Sooyeon Jung(2022) Ways of Legislative Improvement in Response to Technology-Facilitated Sexual Violence. Seoul: Korean Women's Development Institute.

For more details,
go to the KWDI website, to Publications, and then to KWDI Issue Papers.